

10/502293  
JT12 Rec'd PCT/PTO 22 JUL 2004  
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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q82451

Ian David WORTHINGTON

National Stage Application of

PCT/GB2003/000248

-filed January 22, 2003

Confirmation No.: Not Yet Assigned

Group Art Unit: Not Yet Assigned

Filed: July 22, 2004

Examiner: Not Yet Assigned

For: TRACHEOSTOMA VALVE

SUBMISSION OF INTERNATIONAL SEARCH REPORT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Submitted herewith is a copy of the International Search Report received in the International Application corresponding to the above U.S. Application and a PTO/SB/08 A&B (modified) listing the references cited in the Report. Upon issuing the Report, the International Bureau should send a copy of the Report and the cited references to the United States Patent and Trademark Office. However, if the Examiner would like us to obtain and file copies of the references with the USPTO, please contact the office of the undersigned attorney. The Examiner is respectfully requested to acknowledge receipt of the International Search Report.

U.S. Patent Nos. 4,582,058, 5,738,095, and 6,193,751 are also cited at page 3 of the subject application.

The submission of the listed documents is not intended as an admission that any such document constitutes prior art against the claims of the present application. Applicant does not

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Submission of International Search Report  
National Stage Application Based on  
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waive any right to take any action that would be appropriate to antedate or otherwise remove any listed document as a competent reference against the claims of the present application.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
Susan J. Mack  
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WASHINGTON OFFICE  
23373  
CUSTOMER NUMBER

Date: July 22, 2004

Complete if known 10/502295

**Substitute for Form 1449 A & B/PTO**

**REFERENCES CITED IN THE**  
**INTERNATIONAL SEARCH REPORT**

(use as many sheets as necessary)

Sheet 1 of 1

Application Number	National Stage Application Based on PCT/GB2003/000248 -filed January 22, 2003
Confirmation Number	Not Yet Assigned
Filing Date	July 22, 2004
First Named Inventor	Ian David WORTHINGTON
Art Unit	Not Yet Assigned
Examiner Name	Not Yet Assigned
Attorney Docket Number	082451

## **U.S. PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Document Number		Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document
		Number	Kind Code <sup>2</sup> (if known)		
		US 6,193,751	B1	02-27-2001	Singer
		US 4,582,058	A	04-15-1986	Depel, et al.
		US 4,627,433	A	12-09-1986	Lieberman
		US 5,738,095	A	04-14-1998	Persson

## **FOREIGN PATENT DOCUMENTS**

## **NON PATENT LITERATURE DOCUMENTS**

Examiner Signature		Date Considered	
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\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

<sup>1</sup>Applicant's unique citation designation number (optional). <sup>2</sup>See Kind Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov), MPEP 901.04 or in the comment box of this document. <sup>3</sup> Enter Office that issued the document, by the two-letter code (WIPO Standard ST. 3). <sup>4</sup>For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup>Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible. <sup>6</sup> Applicant is to indicate here if English language Translation is attached.

From the INTERNATIONAL SEARCHING AUTHORITY

PCT

NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT  
OR THE DECLARATION

(PCT Rule 44.1)

To:

NOVAGRAAF PATENTS LIMITED  
The Crescent  
54 Blossom Street  
York Y024 1AP  
UNITED KINGDOM

Applicant's or agent's file reference  P3063 WO ORD	Date of mailing (day/month/year)  05/12/2003
International application No.  PCT/ GB 03/ 00248	FOR FURTHER ACTION      See paragraphs 1 and 4 below  International filing date (day/month/year)  22/01/2003
Applicant  KAPITEX HEALTHCARE LIMITED	

1.  The applicant is hereby notified that the International Search Report has been established and is transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the International Application (see Rule 46):

**When?** The time limit for filing such amendments is normally 2 months from the date of transmittal of the International Search Report; however, for more details, see the notes on the accompanying sheet.

**Where?** Directly to the      International Bureau of WIPO  
34, chemin des Colombettes  
1211 Geneva 20, Switzerland  
Fascimile No.: (41-22) 740.14.35

For more detailed instructions, see the notes on the accompanying sheet.

2.  The applicant is hereby notified that no International Search Report will be established and that the declaration under Article 17(2)(a) to that effect is transmitted herewith.

3.  With regard to the protest against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.

no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. **Further action(s):** The applicant is reminded of the following:

Shortly after 18 months from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

Within 19 months from the priority date, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase until 30 months from the priority date (in some Offices even later).

Within 20 months from the priority date, the applicant must perform the prescribed acts for entry into the national phase before all designated Offices which have not been elected in the demand or in a later election within 19 months from the priority date or could not be elected because they are not bound by Chapter II.

Name and mailing address of the International Searching Authority  European Patent Office, P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk Tel. (+31-70) 340-2040, Tx. 31 651 epo nl, Fax: (+31-70) 340-3016	Authorized officer  Wolfgang Urack
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# NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the PCT Applicant's Guide, a publication of WIPO.

In these Notes, "Article", "Rule", and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions respectively.

## INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only.

### What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

### When?

Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

### Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been/is filed, see below.

### How?

Either by cancelling one or more entire claims, by adding one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

**The amendments must be made in the language in which the international application is to be published.**

### What documents must/may accompany the amendments?

**Letter (Section 205(b)):**

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.

**BEST AVAILABLE COPY**

## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

**The following examples illustrate the manner in which amendments must be explained in the accompanying letter:**

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

**It must be in the language in which the international application is to be published.**

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the same time of filing the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority (see Rule 62.2(a), first sentence).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, where upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see Volume II of the PCT Applicant's Guide.

**REST AVAILABLE COPY**

# PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference  P3063 WO ORD	<b>FOR FURTHER ACTION</b> see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.	
International application No.  PCT/ GB 03/ 00248	International filing date (day/month/year)  22/01/2003	(Earliest) Priority Date (day/month/year)  23/01/2002
Applicant  KAPITEX HEALTHCARE LIMITED		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 4 sheets.

It is also accompanied by a copy of each prior art document cited in this report.

### 1. Basis of the report

a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international search was carried out on the basis of the sequence listing :

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

2.  Certain claims were found unsearchable (See Box I).

3.  Unity of invention is lacking (see Box II).

### 4. With regard to the title,

the text is approved as submitted by the applicant.

the text has been established by this Authority to read as follows:

### 5. With regard to the abstract,

the text is approved as submitted by the applicant.

the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

### 6. The figure of the drawings to be published with the abstract is Figure No.

as suggested by the applicant.

because the applicant failed to suggest a figure.

because this figure better characterizes the invention.

3  
 None of the figures.

A. CLASSIFICATION OF SUBJECT MATTER  
 IPC 7 A61F2/20 A61M16/04

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)  
 IPC 7 A61F A61M

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EP0-Internal

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 6 193 751 B1 (SINGER MARK I) 27 February 2001 (2001-02-27) cited in the application claims; figures ---	1-18
A	WO 99 29268 A (SCHOUWENBURG PAUL FERDINAND) 17 June 1999 (1999-06-17) claims; figures ---	1-18
A	DE 87 01 414 U (PASSY & PASSY INC) 16 April 1987 (1987-04-16) claims; figures ---	1-18
A	NL 107 861 C (H J VAN HUNEN) 16 March 1964 (1964-03-16) claims; figures ---	1-18
		-/-

Further documents are listed in the continuation of box C.

Patent family members are listed in annex.

\* Special categories of cited documents :

- \*A\* document defining the general state of the art which is not considered to be of particular relevance
- \*E\* earlier document but published on or after the international filing date
- \*L\* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- \*O\* document referring to an oral disclosure, use, exhibition or other means
- \*P\* document published prior to the international filing date but later than the priority date claimed

- \*T\* later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
- \*X\* document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
- \*Y\* document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.
- \*&\* document member of the same patent family

Date of the actual completion of the international search

28 November 2003

Date of mailing of the international search report

05/12/2003

Name and mailing address of the ISA

European Patent Office, P.B. 5818 Patentlaan 2  
NL - 2280 HV Rijswijk  
Tel. (+31-70) 340-2040, Tx. 31 651 epo nl,  
Fax: (+31-70) 340-3016

Authorized officer

Kuehne, H-C

C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT		
Category	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	EP 0 078 685 A (HANSA MEDICAL PRODUCTS INC) 11 May 1983 (1983-05-11) claims; figures ---	1
A	WO 97 45075 A (ATOS MEDICAL AB) 4 December 1997 (1997-12-04) claims; figures ---	1
A	US 4 582 058 A (MOON JERALD B ET AL) 15 April 1986 (1986-04-15) cited in the application claims; figures ---	1
A	US 4 627 433 A (LIEBERMAN EDGAR M) 9 December 1986 (1986-12-09) claims; figures ---	1
A	US 5 738 095 A (PERSSON JAN-OVE) 14 April 1998 (1998-04-14) cited in the application claims; figures -----	1

Patent document cited in search report		Publication date	Patent family member(s)		Publication date
US 6193751	B1	27-02-2001	NONE		
WO 9929268	A	17-06-1999	NL AU BR CA EP WO	1007736 C2 1446499 A 9813429 A 2313522 A1 1037574 A1 9929268 A1	09-06-1999 28-06-1999 10-10-2000 17-06-1999 27-09-2000 17-06-1999
DE 8701414	U	16-04-1987	DE	8701414 U1	16-04-1987
NL 107861	C		NONE		
EP 0078685	A	11-05-1983	CA DE EP	1187251 A1 3271433 D1 0078685 A1	21-05-1985 03-07-1986 11-05-1983
WO 9745075	A	04-12-1997	SE AU DE DE EP SE WO	508717 C2 2986997 A 69716648 D1 69716648 T2 0959816 A1 9601995 A 9745075 A1	02-11-1998 05-01-1998 28-11-2002 26-06-2003 01-12-1999 25-11-1997 04-12-1997
US 4582058	A	15-04-1986	AT CA DE EP JP	43491 T 1256653 A1 3570589 D1 0187461 A1 61130678 A	15-06-1989 04-07-1989 06-07-1989 16-07-1986 18-06-1986
US 4627433	A	09-12-1986	US	4596248 A	24-06-1986
US 5738095	A	14-04-1998	SE CA DE DE EP ES JP SE WO	511530 C2 2179661 A1 69405587 D1 69405587 T2 0735844 A1 2110830 T3 9506801 T 9304273 A 9517138 A1	11-10-1999 29-06-1995 16-10-1997 12-02-1998 09-10-1996 16-02-1998 08-07-1997 24-06-1995 29-06-1995